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MEMORANDUM

TO: Natural Resources, Agriculture, and Environment Interim Committee

FROM: Emily Brown, Associate General Counsel

DATE: June 13, 2008

SUBJECT: Title 79, Chapter 2, Department of Natural Resources

Two sections in Chapter 2 require additional committee discussion and decision. Here is a brief summary of the section and explanation of the issues that needs to be resolved. The line numbers refer to the attached bill draft.

Section 79-2-203 (Lines 224-252)

Section 7-2-203 addresses policy board members.

Line 224: Subsection (1) establishes membership criteria. This section does not necessarily conflict with the other sections creating the individual boards. However, each board has additional selection criteria, including political party restrictions. If the committee decides to keep this subsection, the board sections should cross-reference to this additional criteria.

Line 229: Subsection (2) establishes compensation for board members. This subsection is repetitive as the sections creating the individual boards address compensation.

Line 242: Subsection (3) addresses removal and vacancy. Subsection (3)(a) regarding removal is unique and not found in other sections addressing board membership.

Subsection (3)(b) is somewhat repetitive. The sections creating the individual boards address vacancy but some sections are more specific than others. For example, the boards for Parks and Recreation and Water Resources require the person filling the vacancy to be from the same district. A vacancy for the Wildlife Board is selected from two names submitted by a committee.

Line 247: Subsection (4), addressing legislators serving on a board, is unique. Even if this section is removed, there are some separation of

powers issues with cross-branch membership. If the committee decides to keep this subsection, the board sections should cross-reference to this limitation.

Line 249: Subsection (5) addresses conflicts of interest. This is mostly a unique provision. Board members for the Geological Survey may not obtain financial gain from information obtained during the course of their official duties. However, this provision is inconsistent with the Utah Public Officers' and Employees' Ethics Act, which governs a person appointed to a policymaking post. This section applies to a direct financial interest whereas the Ethics Act defines a substantial interest differently. In addition, there is a difference in the disclosure rules and the remedial actions.

Section 79-2-302 (Lines 306-315)

This section authorizes the department to charge fees. This is different than the Budgetary Procedures Act, which outlines a procedure for the adoption and approval of fees in Section 63J-1-303. However, the Budgetary Procedures Act is more narrow because it only governs regulatory fees and Section 79-2-302 covers all fees. In addition, the Budgetary Procedures Act requires the fee to be set according to a cost formula developed by GOPB.